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TAB A

7 July 1981

MEMORANDUM

SUBJECT: DCI Questions on Law of the Sea Policy Review

The Office of Geographic and Societal Research is actively participating in the Senior Interagency Group, the Interagency Group and the interagency Working Group on the Law of the Sea. Intelligence support is being provided by attendance at these meetings and by day-to-day informal contact with representatives of participating agencies at all three levels. []

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[] has been tasked to support the US delegation during the August negotiations in Geneva. A senior Law of the Sea analyst from OGSR will attend the first two weeks of the Geneva session to assist the coordination of Agency and State efforts. []

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OGSR is currently preparing two intelligence reports treating the expected negotiating postures of the USSR, the Third World, and other developed nations at the August session.

- o Soviet Frustrations in the Law of the Sea Conference examines the strong Soviet want for the Draft Convention and notes its inability to affect events surrounding the US review.
- o The Law of the Sea Conference: Intersessional Maneuvering reviews Third World and developed nation positions vis-a-vis the US policy review in an attempt to gauge their responses to alternative US negotiating postures. The Third World will likely accept limited changes in the seabed mining text but will balk at any US challenge to the "Common heritage" principle. []

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In addition, OGSR has prepared a comprehensive analysis of the seabed mining alternative which suggests that over the long term the production restrictions of the present Draft Convention might not be operative. Without external assistance or major technological innovations, seabed production of these metals by private consortia would be limited by the prospective rate of return vis-a-vis the return from investment in land-based sources of the metals. []

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The Interagency Group has completed its analysis of the Draft Convention on the Law of the Sea and has identified numerous articles which fail to protect US objectives. These concerns will be brought before the conference in Geneva by the US Delegation which will be instructed only to determine the negotiability of correcting the texts' deficiencies. Following Geneva the Senior Interagency Group will assess the potential for obtaining bottom-line US objectives in the conference and will provide the President with an options paper on the subject. []

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In its review the Interagency Group has found that: (1) the draft treaty's provisions on navigation and control of coastal state encroachment by and large meet the US objectives of maximizing freedom of transport and maneuvers in the open seas, in the 200-mile Exclusive Economic Zones (EEZ), and through straits, (2) the fisheries articles would strengthen coastal state rights over coastal species in the EEZ but do not provide for the effective management of highly migratory tuna, and (3) the biggest difficulty with the present draft treaty lies with the provisions in the deep seabed mining text, which calls for a transfer of technology from mining countries to the Third World, limits on the production of minerals from the seabed, and a system of international governance that would be controlled by the Third World. []

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From an Agency viewpoint, the US decision to re-examine the draft treaty text, particularly in regard to the deep seabed issue, is understandable. In their effort to attain consensus on a comprehensive treaty package the US and its developed-country allies have made unusually strong economic concessions to the Third World. The proposed regime for the deep seabeds would likely hinder fruitful exploitation of these important minerals, and would create an unfortunate precedent for the governance of other "commons" such as the antarctic and outer space. The United States is probably best served by a LOS Treaty that guarantees mining companies secure access to minesites but does not commit the companies to technology, financial, and regulatory burdens. Thus, the challenge to our negotiators is to attain a deep seabed exploitation system that is basically responsive to market forces and free of artificial restraints, while, simultaneously withstanding retaliatory pressures of certain developing coastal states to wither away our essential navigational rights. []

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Intelligence support to these important negotiations and policy decisions should continue to come in the form of timely data on foreign negotiating positions, and objective assessments of likely foreign reactions to new US initiatives. []

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